

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Implementation of the)
Cable Television Consumer)
Protection and Competition)
Act of 1992)
)
Cable Home Wiring)

MM Docket No. 92-260

COMMENTS OF MEDIA ACCESS PROJECT

Media Access Project ("MAP") respectfully submits these comments in response to the Notice of Proposed Rulemaking ("NOPR"), FCC No. 92-500 issued in the above proceeding.¹ The NOPR requests comment on issues related to cable home wiring.

MAP urges the Commission to promulgate rules in this area that promote competition in the delivery of non-over-the-air services. At a minimum, such policies should insure that cable wire installed in the home by cable system operators be made readily available for subsequent access to multichannel video services other than cable.

The Commission has rightly noted that the legislative history of the Cable Television Consumer Protection and Competition Act of 1992 ("1992 Cable Act" or "the Act") "appears to favor Commission action that would enable the subscriber to acquire cable home wiring upon termination of service." NOPR at Par. 2.

¹MAP is a non-profit, public interest telecommunications law firm. MAP is not a membership group, and typically represents other organizations before the FCC and the courts. On occasion, however, MAP addresses general policy matters in its own name based on its longstanding knowledge of the needs and views of the public.

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The legislative history indicates further that Congress was determined to reverse the cable industry's historic practice of purposefully crippling delivery of alternative video programming by, inter alia, removing internal wiring and destroying antennas. See S. Rep. No. 92, 102nd Cong., 1st Sess. (1991) at 45; H.R. Rep. No. 628, 102nd Cong. 2d Sess. at 54. (1992).

Given this history, the Commission clearly has the power to adopt rules vesting wire ownership in cable subscribers. Certainly there are strong policy reasons to do this. Cable's monthly per subscriber cost for programming and maintenance is far lower than monthly subscription fees, and the cost of wiring can be recouped in a relatively short period of time. Subscribers pay hefty installation fees ranging anywhere from twenty to fifty dollars, and cable operators thus have ample opportunity to recover any remaining costs over the next few months from subscription fees. If subscribers terminate quickly, it is because of marketplace response to cable's offerings, not because cable is unable to derive adequate compensation from its service.²

The most important point MAP wishes to stress is that, regardless of who has title to the installed wire, any rules the Commission creates must permit alternative providers to connect to cable wiring at the minimum point of entry into the home. Consumers should control the wiring and its use on their side of

²It would also appear that it is within the Commission's discretion under the Act to determine that subscriber ownership of cable wiring begins not just at termination of service, but at the time of installation; spread system-wide, absorption of possible losses from early termination ought not be a problem.

the demarcation point.³ Anything less would contravene the public's First Amendment right to access to the widest possible range of voices and ideas. See e.g., Capital Cities Cable v. Crisp, 467 U.S. 691, 714 (1984); Associated Press v. United States, 326 U.S. 1, 20 (1945).

Such rules would be entirely consistent with the 1992 Cable Act. Congress found that for a variety of reasons, cable has become a vertically and horizontally integrated monopoly which uses its power to stifle competition from other multichannel video programmers. 1992 Cable Act, Secs. 2(a)(2),(4)-(5).⁴ It also found that there is "a substantial governmental and First Amendment interest in promoting diversity of views provided through multiple technology media." 1992 Cable Act, Sec. 2(a)(6). Permitting open access and subscriber ownership of home cable wire would somewhat diminish cable's power while promoting diversity of voices.

Moreover, MAP wishes to emphasize that the power the cable industry has acquired, which has resulted in its domination of

³As for multi-unit dwellings, at the very least, the individual unit dweller should own the wiring inside the unit. However, if the Commission finds that it has power under the Act to vest ownership of a dwelling's common wiring in the property owner, it should do so, for the same policy reasons. What is most important, however, is that the Commission require cable systems operators to provide non-discriminatory access to common wiring to other multichannel video providers. Without access to the common wire, access to the individual unit wire is meaningless.

⁴Congress also found that, in most cases, it would be cost prohibitive and generally impractical for another multichannel video provider to overbuild in a community. 1992 Cable Act, Sec. 2(a)(2). See Omega Satellite Products v. City of Indianapolis, 694 F.2d 119, 125 (7th Cir. 1984) (Posner, J.).

the multichannel video marketplace, was obtained through receipt of significant benefits from Congress and local governments. These benefits include, inter alia, easements and rights of way which are not available to non-franchised multichannel programmers. See 47 USC Secs. 541(a)(2), (b)(1). In addition, cable is protected by the 1984 Cable Act from natural competitors such as telephone companies and broadcast television licensees. 47 USC 533(a)-(b). It would be perfectly appropriate and constitutional, therefore, for the FCC to require, as a condition of such benefits, that cable systems share their wire with other delivery services to advance the public's right to receive information from diverse sources. See CBS Inc. v. FCC, 453 U.S. 453 U.S. 367, 395-96 (1981); CBS v. DNC, 412 U.S. 94, 101-02 (1973).

Consistent with the goals of the First Amendment, the Commission has a duty to insure that the public receives access to a wide diversity of voices. This can only be accomplished if the consumer is permitted to decide what program sources he or she wants, without fear that access to those sources will be destroyed by cable companies. Thus, the Commission must require cable companies to permit alternative service providers to use cable wire to the home on a non-discriminatory basis, and must permit home owners to own such wire at least after cable service

is terminated.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Gigi B. Sohn". The signature is stylized with a large, looped "G" and a distinct "S" at the end.

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